IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 801 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJENDRASINH ALIAS RAJAN PUNANUSINH RAJPUT - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR DHAVAL N VAKIL, A*micus curiae*
MR ND GOHIL, APP, for the respondent-State.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 27/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. This appeal arises out of a judgment and order dated 13th July, 1993, rendered by learned Additional City Sessions Judge, Court No.12, Ahmedabad, in Sessions case No.203 of 1992, convicting the appellant for the offence or murder of one Ajay Pande, allegedly, committed by him on April 20, 1992, at about 17.00 hours, in Soni Jnati'ni Wadi, Chhabila Hanuman Road, Ahmedabad, by inflicting knife blows on the deceased. The Trial Court sentenced the appellant to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo further rigorous imprisonment for 15 days. Aggrieved by the said judgment and order, present appeal is preferred.

2. The appellant was originally represented by learned Advocate, late Mr. H. L. Patel. We are informed that the appellant is absconding since 28th January, 1995 and there were no instructions to the office of late Mr. H. L. Patel. Learned Advocate,

Mr. D. N. Vakil, was present in the Court when the matter was called out on 21st September, 2006 and he expressed his willingness to assist the Court as *amicus curiae* and he came to be appointed as such. The applicant's case, therefore, is represented by learned Advocate, Mr. D. N. Vakil, acting as *amicus curiae*. The state is represented by learned Additional Public Prosecutor, Mr. Gohil. The record and proceedings are before us.

3. Brief facts of the case are that the deceased was working in the factory of one Himatbhai around the time of the incident. The factory is located at Soni Jnati 'ni Wadi, Chhabila Hanuman Road, Ahmedabad. Around 5.00 P.M. on 20th April, 1992, it is alleged that the appellant committed assault on the deceased with a knife and caused fatal injuries to him. This incident occurred in the premise of the factory of Himatlal. The incident is claimed to have been seen by one Pradipkumar Kantilal Parmar (P.W.1-Exhibit 10). One Vijay telephoned to the police and to the house of the deceased and, pursuant thereto, father of the deceased came to the factory. Pradipkumar Parmar (P.W.1), in the meantime, had informed Himatlal about the incident. He also

informed Santram Ramabhilash Pande, father of the deceased, about the incident, but he did not disclose name of the appellant as the assailant to either of them. However, father of the deceased went to police and lodged a First Information Report. Offence came to be registered and investigation initiated. At the end of the investigation, the Investigating officer found that there was sufficient material to connect the appellant with the crime and he, therefore, lodged charge sheet in the Court of learned Metropolitan Magistrate. As the offence was triable by a Court of Sessions, the case was committed by the learned Metropolitan Magistrate to the Sessions Court and Sessions Case No.203 of 1992 came to be registered.

3.1 The Sessions Court framed charge at Exhibit 2, to which the accused pleaded not guilty and came to be tried.

3.2 On the basis of the evidence led by the prosecution, the Trial Court came to a conclusion that the prosecution was successful in establishing the charges against the appellant-accused and recorded conviction for the offence of murder and ordered him

to undergo the sentence as stated above.

4. Learned Advocate, Mr. Vakil, submitted that the Trial Court has committed an error in appreciating the evidence. According to Mr. Vakil, the prosecution case depends mainly on deposition of eye-witness, Pradip. No reliance could have been placed on evidence of this witness for the reason that, he discloses nothing about the genesis of the incident or about the sequence of events. What he has disclosed on the contrary raises doubt about his claim of having witnessed the incident or about his allegation of the appellant being involved in the incident. It was submitted that soon after the incident, this witness reports to his employer, Himatlal, and to whom he does not disclose name of the appellant as the assailant but says that someone has assaulted the deceased. Soon thereafter, when father of the deceased approaches him, again, Pradipkumar does not say that the appellant was involved in the incident. The first informant had no other source to know about the involvement of the appellant. Still father the deceased, in his F. I. R., implicates the appellant. Mr. Vakil submitted that this has to be viewed from the angle that the deceased, father of

the deceased and their family had a long drawn grievance against the deceased, where it is alleged that the appellant had a love affair with the sister of the deceased, to which the family did not approve and the girl was married to someone else. However, the appellant was trying to chase her.

4.1 Mr. Vakil submitted that, it emerges from deposition of P.W.1-Pradipkumar that the deceased had in his hand a Gupti, which is, ultimately, recovered from the place of incident. That Gupti contains blood stains of the group of the deceased. Therefore, the evidence of Pradipkumar ought not to have been accepted by the Trial Court.

4.2 Mr. Vakil submitted that apart from the defects found in the deposition of P.W.1, who claims to be an eye-witness, there are other factors which would render the investigation and the prosecution case doubtful. Mr. Vakil submitted that it has come in evidence that the accused went for treatment to a private doctor. P.W.8-Dr. Harendra Mayashankar Trivedi (Exhibit 29) says that he had given treatment to the appellant at about 6.30 P.M. on the day

of the incident and he had noticed a wound on the forehead, just above the right eyebrow. He has produced copy of the case paper in the name of the appellant. However, if the evidence is seen as a whole, Mr. Vakil submitted that, the case paper does not bear any number, the age is manipulated, the name of the patient is shown as Raju only and the address is shown to be under C/o. Munna Dada, staying near Barejadi Station, but the witness did not know either of them. The witness did not inform the police though he claims that he was told by the accused that he had sustained injury in a fight. Mr. Vakil submitted that the alleged disclosure by the appellant before this doctor is very vague. It does not indicate the place of incident or time of incident or person with whom the appellant allegedly had a fight. Apart from this, it is indicated that the eye-witness does not speak of any fight having taken place. Therefore, the prosecution has failed to disclose the genesis of the incident and the sequence of events.

4.3 Mr. Vakil submitted that, additionally, it has come in evidence of P.W.7-Dr. Ravindra Balasaheb Deshmukh (Exhibit 27) that he had treated the appellant on 24th April, 1992. According to

this witness, the appellant gave a history that he sustained injury with a Gupti on 20th April, 1992 in a scuffle. However, the report from the F.S.L. indicates that the Gupti in question contains blood marks of the group of the deceased and not that of the accused and there is no evidence to show that the Gupti was used in inflicting injuries to the deceased by the appellant. Mr. Vakil, therefore, submitted that the version of the eye-witness that he saw Gupti in the hands of the deceased, version of the doctor that the accused told him that he had sustained injury with Gupti in a scuffle on 20th April, 1992 and version emerging from FSL report that blood on Gupti was of the group of the deceased are inconsistent inter se and there is no explanation coming from the prosecution as to how the Gupti contained blood stains of the blood group of the deceased.

4.4 Mr. Vakil submitted that the discovery of the weapon in presence of Panch witnesses is also not reliable. The discovery is made from an open place. Mr. Vakil submitted that all these factors have been overlooked by the Trial Court. The evidence of the eye-witness is not reliable and other circumstances brought on

record by the prosecution not only do not establish the case of the prosecution but also render it susceptible to doubt and, therefore, the appeal may be allowed, the conviction may be set aside and the appellant may be acquitted of the charges levelled against him.

5. Learned Additional Public Prosecutor, Mr. Gohil, submitted that P.W.1 had no grievance against the appellant and had no reason to falsely implicate him. Mr. Gohil submitted that, it is true that it has come in evidence that the eye-witness did not disclose involvement of the appellant, initially, but on the day of incident itself, in the F. I. R. lodged by father of the deceased, the appellant's name is disclosed. The father of the deceased had no other source to know the name of the assailant and, therefore, necessarily, information must have been disclosed by P.W.1, who is an eye-witness to the incident and, therefore, a broad view was rightly taken by the Trial Court in accepting the deposition of P.W.1 as an eyewitness. Mr. Gohil submitted that the discovery of weapon by the appellant is a strong factor against him and there is no reason to disbelieve it once the Panch witness has supported the prosecution case. It was also submitted by learned Additional

Public Prosecutor that, consistently before two doctors, once on the day of incident and the second time, a few days thereafter, the appellant has indicated his involvement in the incident, though not in so many words and, therefore, the involvement of the appellant is properly established.

5.1 Learned Additional Public Prosecutor submitted that, considering the time factor, involvement of the appellant in the incident is proved through depositions of the doctors, who treated him. The injury sustained by the deceased were three in number, only one of which was fatal and was attributable to the knife, which was discovered by the appellant and, therefore, the nexus between the crime and the appellant was established by the prosecution. Mr. Gohil, therefore, submitted that the Trial Court has rightly recorded conviction by keeping all these relevant aspects and has properly appreciated the evidence. He submitted that the Court may not exercise appellate powers in favour of the appellant and may dismiss the appeal confirming the conviction.

6. Now, if we examine the record in light of the

contentions raised before us, we find that the prosecution case depends mainly on evidence of P.W.1-Pradipkumar Kantilal Parmar, who claims to be an eye-witness. He claims to be knowing the appellant and the deceased, who was his co-worker. He says that the appellant had a love affair with the sister of the deceased and had come to see the deceased on 2-3 occasions earlier and on those occasions, there were quarrels between them. On the day of the incident, around 5.00 - 5.15 P.M., he heard shouts of the deceased calling “Pradip”, “Pradip”. He saw the appellant running behind deceased-Ajay with a knife in his hand. He saw that the appellant inflicted knife blows on the deceased in chest and back. The witness claims that when he tried to rescue the deceased, the appellant, while running away from the place, threw a soda bottle on him. Deceased-Ajay was bleeding profusely from chest and back injuries. The knife with which the injury was caused was about 7 to 8 inches long. Deceased-Ajay had a Gupti in his hand. He says that the police arrived and recorded F. I. R. of Santram Ramabhilash Pande, father of the deceased.

6.1 In cross-examination, it emerges that there were many

workers working in the factory at the time of the incident. He says that, on the day of the incident, he was present in the factory till about 10.00 P.M. He says that, he reported the incident to his employer. His employer inquired as to who was the assailant. The witness said he did not give name of the appellant as the assailant to his employer. He also admits to have stated to his employer that injury was caused to Ajay with some sharp cutting instrument. He had shown the place of incident to his employer. The witness says that, he was present when the Panchnama was drawn. He says that he saw Ajay falling in front of the office in an injured condition. He does not remember whether at that time the Gupti was in the hands of the deceased. He says that he saw Ajay coming running with a Gupti in his hand. He says that he does not know what happened to the Gupti but the sheath of the Gupti was found from the place of incident.

6.1.1 During further cross-examination, he says that after inflicting the second blow, the appellant ran away and that he tried to chase the assailant for about 10 paces. He says that he could see the face of the assailant only for about 4 to 5 seconds, the time

during which the injuries were being inflicted. He says that the father of the deceased came there on the day of the incident and he had a talk with him after about two hours. He admits that, at that time, he did not tell father of the deceased that Rajan had assaulted deceased-Ajay. He denies the suggestions made to him during cross-examination about he having not seen the incident, etc.

6.2 Evidence of P.W.7- Dr. Ravindra Balasaheb Deshmukh (Exhibit 27) indicates that he had treated the appellant on 24th April, 1992. He claims that the appellant told him that he sustained injury in a scuffle that took place on April 20, 1992. He saw the injury on the forehead, just above the right eyebrow and the injury was of a nature which could be caused with a Gupti. The witness says that the accused gave him a history of having sustained injury with a Gupti on 20th April, 1992, at about 5.00 P.M., in a scuffle. The witness is cross-examined at length on various aspects to render his deposition doubtful.

6.3 P.W.8-Harendra Mayashanker Trivedi (Exhibit 29), who is also a doctor, claims that he treated the appellant on 20th April,

1992, at about 6.30 P.M. and, in support of his case, he has produced copy of the case paper prepared by him. We have examined the case paper, which is at Exhibit 30. This witness says that the appellant told him that he had sustained injury in a fight, but he does not disclose the place and time of the fight and the details of persons involved in the fight. It transpires from his cross-examination that he had not informed the police about the incident although he was given to understand that the appellant had sustained injury in a fight. It also transpires that the case paper carries manipulation regarding age of the patient from 10 to 20. It also transpires that the case paper does not bear number and name of the patient is incomplete and is referred to simply as “Raju, C/o. Munna Dada”. The witness admits that he does not know Munna Dada. He admits that when he does not know the patient, he writes down the name of the patient full.

6.4 The evidence of P.W.9-Santram Ramabhilash Pande is at Exhibit 31. He is the father of the deceased and the first informant. He says that there were two/three boys working in Harsha Winding Works, who told him that it was the appellant who

had assaulted the deceased. He says that he learnt about the incident through a telephone made by Vijay from the factory. He says that all that he learnt through the phone was that Ajay had sustained a knife blow and, therefore, he went to the place. He says during cross-examination that Vijay told him that somebody had inflicted a knife blow on Ajay. He says that he never met Vijay at a later point of of time when he went to the place of incident.

6.5 P.W.11-Dr. Kalpesh Amrutlal Shah is examined at Exhibit 38. He had performed the postmortem. He noticed four injuries on person of the deceased. Three of the injuries were stab injuries, two were in the chest and one in the back. According to this doctor, injury No.3 had a corresponding internal injury, which caused the death. The said injury was possible to have been caused with muddamal article No.13-knife and that it was not possible with muddamal article No.3-Gupti. According to the doctor, the other two injuries were possible with Gupti and that the injuries were sufficient in ordinary course of nature to cause death.

7. Considering the F. S. L. report, which is on record at

Exhibit 17, it appears that muddamal Article 3-Gupti contained human blood of “A” Group and muddamal Article 13-knife contained blood of “A” Group. The sheath of Gupti as well as the knife contained human blood, but the group was not identifiable and rest of the articles, namely, bush-shirt, banian, pants, underwear, handkerchief and Chappel carried human blood of Group “A”, whereas bush-shirt contained human blood of “O” Group. It is, thus, clear that the Gupti contained blood group of the deceased and not the appellant, whereas the knife contained blood group of the deceased, i.e. human blood Group “A”.

8. From the above evidence, it is clear that there is no dispute or challenge to the fact that the deceased met with a homicidal death. The doctor who performed postmortem has indicated that the injuries were homicidal in nature and were sufficient in ordinary course of nature to cause death.

9. Now, coming to the question as to whether there is evidence to establish the guilt of the accused, we find that the prosecution case, taken as a whole, suffers from a number of

defects. The evidence led by the prosecution does not inspire a confidence good enough to confirm the conviction recorded by the Trial Court.

10. P.W.1-Pradip Kantilal Parmar, who claims to be an eye-witness, says that, on hearing shouts he saw the deceased running being followed by the appellant with a knife in his hand and that he also saw the appellant inflicting injuries with the knife. The witness has not seen what happened prior to the appellant allegedly chasing the deceased and causing injury, but the witness does say that he saw a Gupti in the hand of the deceased. The Gupti is found from the place of incident along with sheath and the Gupti contained blood stains of the group of the deceased. This would indicate that the Gupti was used in causing injury to the deceased. The question, therefore, would be, who caused that injury with the Gupti and that question has remained unanswered and unexplained by the prosecution. The eye-witness does not speak of involvement of anyone else in the incident.

10.1 The eye-witness, when asked immediately after the

incident by the employer as to what has happened, does not disclose anything about involvement of the appellant in the incident. He discloses that injury is caused to the deceased by some sharp edged weapon. Similarly, when contacted by the father of the deceased, again, he does not disclose involvement of the appellant in the incident. He has admitted in his cross-examination to have stated before his employer that the assailant while running away threw soda bottle on him. This witness claims to be knowing the appellant prior to the incident and in such situation, his disclosure ordinarily should have indicated name of the appellant, if the appellant was really involved in the incident.

10.2 The eye-witness has not disclosed anything as to how the incident started and why the appellant was chasing the deceased with a knife in his hand and how the deceased had a Gupti in his hand. Therefore, the genesis of the incident is not coming on record and what is coming on record by way of deposition of P.W.1, who claims to be an eye-witness, is of such a nature which does not inspire confidence because it suffers from the vice of inconsistency with other evidence, so also the conduct of

the witness.

11. The incident has occurred in a factory, where so many persons were working. But none has seen the incident.

11.1 The owner of the factory, Himatlal, to whom first disclosure was made by the so called eye-witness (P.W.1) has not been examined.

11.2 Soon after the incident, a telephone call was made to the father of the deceased by one Vijay. He has also not been examined by the prosecution. But it emerges from cross-examination of father of the deceased that Vijay also told him that someone had assaulted the deceased and did not implicate the appellant.

11.3 The deceased had a Gupti in his hand. That Gupti contains blood Group of the deceased himself. That Gupti is shown to have caused injury to the appellant on his forehead, which was a bleeding injury. But it does not contain blood group of the

appellant and, therefore, the evidence of two doctors, who claim that the appellant gave history of involvement in a fight and injury being caused to him with a Gupti would not advance the prosecution case any further towards the appellant.

11.4 P.W.1 states that he did not disclose name of the appellant to the father of the deceased. The father of the deceased has disclosed name of the appellant in the F. I. R., which is lodged on arrival of the police at the place of incident. The question as to how the father of the deceased could name the appellant in the F.I.R. has remained unanswered. Of course, it has come in evidence that he had inquired about the incident from 2/3 persons in the factory. Who those persons were and whether anyone of them disclosed the name of the appellant is not unfolded in the prosecution case. None of such persons are examined and the father of the deceased does not disclose name of such persons. But assuming for the moment that the other persons, to whom the father of the deceased had asked about the incident, disclosed the name of the appellant, a necessary inference can be drawn that the said man would have a claim of being an eye-witness to the

incident, but no such person is projected as eye-witness or examined as an eye-witness.

12. Keeping the above factors in view, in our opinion, it cannot be said that the prosecution was able to establish the case against the appellant beyond reasonable doubt of having committed murder of the deceased. When the genesis of the incident is not brought on record, when what is brought on record as evidence of eye-witness suffers from defects narrated above, when other circumstances like presence of Gupti in hands of the deceased, injury on the deceased possible with Gupti and blood stains of the group of the deceased found on the Gupti have remained unexplained and the evidence in the form of previous disclosure by the appellant is found to be inconsistent by the fact that the Gupti contained blood of the deceased and not of the accused, we are of the view that we cannot run the risk of confirming the conviction recorded by the Trial Court for the offence of murder. The ingredients of murder cannot be said to have been fully established. In fact, involvement of the appellant is also not established beyond doubt and, therefore, in our opinion,

the appeal merits acceptance.

13. The appeal is allowed. The judgment and order of conviction and sentence recorded by the Trial Court is hereby set aside. The appellant-accused is acquitted of the charges levelled against him.

14. Lastly, we may place on record our appreciation of the services rendered by learned Advocate, Mr. Vakil, as *amicus curiae*, who took the pains of going through the evidence and assisting us in re-appreciation of the evidence.

[A. L. DAVE, J.]

[BANKIM N. MEHTA, J.]

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